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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE TESLA, INC. SECURITIES
LITIGATION

Case No. 3:18-cv-04865-EMC

**PLAINTIFF'S NOTICE OF
SUPPLEMENTAL AUTHORITY RE:
EARLY MOTIONS *IN LIMINE***

During yesterday's hearing on the parties' early motions *in limine*, the Court addressed the legal question of whether and how much of the decline in Tesla Inc.'s stock price from August 8, 2018 to August 17, 2018, could be recoverable by investors under Section 10(b) of the Securities Exchange Act of 1934. Plaintiff argued that that "consequential" damages relating to regulatory and other litigation risk, reputational harm, and other collateral concerns resulting from Elon Musk's tweets on August 7, 2018, as identified and measured by his expert, Dr. Michael Hartzmark, are recoverable. Defendants disagreed.

To further assist the Court, Plaintiff respectfully refers to the following decisions which we believe speak to the recoverability of these "consequential" or "collateral" damages:

- *Waggoner v. Barclays PLC*, 875 F.3d 79, 106 (2d Cir. 2017) (approving damages methodology that provided plaintiffs with ability to recover losses caused by "concern[s] with lack of management honesty and control" and holding that "the regulatory action and any ensuing fines were a part of the alleged harm the Plaintiffs suffered, and the failure to disaggregate the action and fines did not preclude class certification.")

- *Baker v. SeaWorld Entm't, Inc.*, 423 F. Supp. 3d 878, 908-09 (S.D. Cal. 2019) (denying defendants' motion to exclude where plaintiffs' expert explained that revelation of alleged fraud resulted in stock drop because of harm to "corporate brand and corporate reputation," which "constitutes a structural change in value and demand for the company's products or services").
- *In re Vivendi Universal, S.A. Sec. Litig.*, 634 F. Supp. 2d 352, 371–72 (S.D.N.Y. 2009) (denying summary judgment on loss causation and holding that losses from stock price declines following credit ratings downgrades and attributed to concerns about management were recoverable as a result of misrepresentations regarding corporation's liquidity). The jury verdict in favor of plaintiff in this case was affirmed by the Second Circuit. *In re Vivendi, S.A. Sec. Litig.*, 838 F.3d 223, 233 (2d Cir. 2016).

In light of the complex legal arguments raised by this issue and the limited briefing addressing it in the context of the motions *in limine* heard by the Court yesterday, Plaintiffs respectfully submit that it may be appropriate for the parties to submit additional briefing limited to the legal issue of loss causation or proximate cause. Otherwise, we remain available to discuss the matter further at your Honor's convenience.

Dated: July 29, 2022

Respectfully submitted,

LEVI & KORSINSKY, LLP

s/ Adam M. Apton

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